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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 3, 2000

VIA HAND DELIVERY

Magalie R. Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: CC Docket No. 96-98, Deaveraged Rate Zones for Unbundled Network Elements

Dear Ms. Salas:

This is to inform you that on April 28, 2000, the Telecommunications Regulatory Board of Puerto Rico adopted a three-zone deaveraging plan for unbundled network elements rates, in compliance with 47 C.F.R. 51.507(f). The Resolution and Order adopting the plan is attached.

Please do not hesitate to contact the undersigned if you have any questions.

Respectfully submitted,

Veronica M. Ahern

cc: Neil Fried
Phoebe Forsythe Isales
Douglas Meredith

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GOVERNMENT OF PUERTO RICO
TELECOMMUNICATIONS REGULATORY BOARD
OF PUERTO RICO

RECEIVED
MAY 03 2000

In Re

Geographic Rate De-Averaging

Case No. JRT-2000-SU-0001

RESOLUTION AND ORDER

The Telecommunications Regulatory Board of Puerto Rico (Board) issued a Notice of Technical Hearing for Rule Making on February 18, 2000 in order to adopt a rule regarding geographic rate de-averaging for unbundled network elements (UNEs) and interconnections. Said rule will establish a methodology to be implemented in the determination of zones with different UNEs rates. This process represents another step in the implementation of fair and equitable competition in the telecommunications market in Puerto Rico.

Geographic rate de-averaging refers to the concept of establishing different rates for UNEs in different geographic areas. This concept is based on the idea that the cost for providing UNEs varies with the geographic area in which the service is provided. For example, the unit cost of such elements may be lower in the metropolitan area than in the mountainous and rural areas of Puerto Rico.

INTRODUCTION

This inquiry arises out of an order issued by the Federal Communications Commissions (FCC).[1] The FCC, in its effort to implement sections 251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (Act), prescribed rules applicable to pricing of network elements, interconnection and methods of obtaining UNEs.[2] As part of these rules, the FCC directed the states (including Puerto Rico), to establish geographically de-averaged rates for all UNEs. Pertaining to these rules the states must adopt at least three distinct geographic areas in order to reflect different cost levels for providing services to them.

UNEs are physical (facilities or equipment) and functional (features, functions, etc.) elements of the network that incumbent local exchange carriers have a duty to provide to telecommunications carriers under federal law and regulations. The Act requires that incumbent local exchange carriers (ILECs) unbundled specific network elements and make them available to competitive LECs on the basis of forward-looking economic cost. The

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[1] Deaveraging Rate Zone for Unbundled Network Elements, CC Docket No. 96-98, Stay Order, 14 FCC Rcd 6300 (1999).

[2] 47 C.F.R. 51.507

elements of the network that are required to be unbundled include such things as the copper wires to the customers, fiber strands, and local switching.[3]

On May 7, 1999, the FCC stayed the effectiveness of section 51.507 (f).[4] In its order, the FCC stated that the stay would remain in effect until six months after the release of its order in CC Docket No. 96-45, which finalized and ordered the implementation of high-cost universal service support for non-rural LECs. On November 2, 1999, the FCC released a further order in CC Docket No. 96-45 that lifted the stay on May 1, 2000.[5]

At present, PRTC has provided de-averaged rates for loops using a density measure to classify each Central Office in Puerto Rico. PRTC has established said rates in several interconnection agreements. The present order establishes a minimum three-zone structure for geographically de-averaged rates for UNEs. Hence, the present order will affect all present and future UNE agreements in Puerto Rico. Specifically, PRTC agreements that established a nine-zone structure are amended by the present order. All affected parties are directed to amend all UNE agreements in compliance with the present order.

PROCEDURAL HISTORY

The Board issued, on February 16, 2000, and released on February 18, 2000, a Notice of Technical Hearing for Rule Making. In the Notice, the Board invited all interested parties to a technical hearing in order to discuss geographic rate de-averaging. The Board specifically indicated that it sought comments on the specific method of geographic rate de-averaging to be implemented in Puerto Rico. The technical hearing was held on March 21, 2000 and pre-filed testimony was due by March 14, 2000.

A. Pre-Hearing Testimony.

On March 14, 2000, AT&T of Puerto Rico (AT&T) submitted its pre-hearing comments.[6] In its comments, AT&T proposed the use of the Hatfield Model (HAI) or the Hybrid Cost Proxy Model (HCPM). AT&T suggested the use of the models to develop the cost by wire center and the average cost per line per wire center, followed by ranking the wire centers from low to high cost. Further, in order to determine the three geographic zones, AT&T suggested grouping those wire centers that fall within 0 to 100% of the average cost per line per wire center into zone 1; those that fall within 100 to 200% of the average cost per line per wire center into zone 2; and those over 200% in zone 3.

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[3] See Newton's Telecom Dictionary, Harry Newton, Miller Friedman, Inc., 1999.

[4] De-Averaging Rate Zone for Unbundled Network Elements, CC Docket No. 96-98, Stay Order, 14 FCC Rcd 8300, 8300-01 (1999).

[5] Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306, November 2, 1999, Paragraph 120.

[6] Comments of AT&T of Puerto Rico, Inc., AT&T of Puerto Rico, Case No. JRT-2000-SU-00001, March 14 2000.

On March 14, 2000, PRTC submitted its pre-hearing comments.[7] In its comments, PRTC indicated that it had established six loop-rate zones and that it had calculated the loop rates for each density zone using its Forward-Looking Model, (FLM). PRTC also included an exhibit titled PRTC Forward Looking Unbundled Element Rate Development Summary. In it PRTC showed how the six loop rate zones have been used in prior interconnection agreements. PRTC actually has provided for up to nine loop-rate zones, but only six of them are populated given the selection criteria used by PRTC.

On March 17, 2000 Centennial de Puerto Rico (Centennial) submitted its pre-hearing comments.[8] Centennial argued that the primary unbundled element for which geographic cost differences exist is the local loop. It suggested that the three geographic rate zones should be determined by dividing the central offices by length of the loop. Centennial also raised the issue of PRTC's extensive use of host/remote switches.

B. Hearing Testimony

The technical hearing was held on March 21, 2000. Present were representatives of AT&T and PRTC, who provided substantive comments and also filed post-hearing briefs.

PRTC was represented by attorney Joaquín A Márquez and David C. Blessing. Mr. Blessing, economic advisor to PRTC, presented PRTC's testimony. Mr. Blessing testified that PRTC has used geographically de-averaged loop rates based on its FLM in prior interconnection agreements. It further stated that PRTC had created nine geographically de-averaged zones, and that such divisions were based on the existing proxy models (HAI and BCPM). The geographic zones created were based on population density; thus, there were only lines in six zones. After being questioned by the Board, Mr. Blessing expressed that PRTC did not have any preferences regarding the amount of zones to be implemented. Questions were also asked regarding the specific UNEs to be de-averaged, to which Mr. Blessing stated that the only UNE that should be considered was the local loop, because this was the only UNE that had a meaningful cost difference between geographic locations. Mr. Blessing disregarded de-averaging transport and switching cost because most forward looking models do not distinguish between switching and transport costs based on geography. Mr. Blessing also presented testimony regarding the relationship between geographic rate de-averaging of UNEs and the federal universal service support mechanisms. He stated that any geographically de-averaging of loops should be made in conjunction with the method that universal service disbursement is going to be geographically de-averaged.

PRTC opposed in part AT&T's proposal. Mr. Blessing testified that the proxy model recommended by AT&T uses defaults that are not company specific, contrary to the FLM, as

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[7] Puerto Rico Telephone Company, Inc. Submission of Testimony of David C. Blessing, Puerto Rico Telephone Company, Case No. JRT-2000-SU-00001, March 14, 2000.

[8] Comments of Centennial de Puerto Rico, Centennial de Puerto Rico, Case No. JRT-2000-SU-00001, March 17, 2000.

proposed by PRTC, which uses area specific inputs. In PRTC's opinion, the result of the use of proxy input would result in a distorted cost, one that did not necessarily reflect the true forward looking cost of the areas.

AT&T was represented by attorney Arnaldo M. Mignucci and José Nieves. Mr. Nieves presented testimony for AT&T. Mr. Nieves testified that AT&T suggested the use of the HAI model or the HCPM. It was his statement that one of these models should be used to determine three cost zones. Mr. Nieves suggested that the zones be determined by identifying the cost of each wire center and arranging wire centers into designated cost zones. Mr. Nieves agreed with PRTC in that the only UNE that should be considered for geographic de-averaging is the local loop, and that transfer or switching cost should not be considered. Mr. Nieves testified that AT&T did not have any preference regarding the amount of zones to be implemented; nonetheless he suggested that the higher the number of zones, the more accurate the local loop cost would be.

Questions were made by the Board regarding the 0-100%, 101-200%, and 200%+ distribution (base on a division of wire center rates base on the average loop cost for all wire centers). Mr. Nieves acknowledged that he had no evidence to sustain the specific percentage thresholds. In fact, he admitted that his percentage thresholds were arbitrary and that they could be changed without violating the intent of the procedure.

C. Post-Hearing Briefs.

Both parties presented post-hearing briefs. On April 10, 2000, AT&T filed its post hearing brief, in which it submitted three arguments. First, AT&T argued that the only UNE that merits de-averaging was the local loop. The Board notes that all parties are in agreement with this position.

Second, AT&T argued in favor of the use of the HAI model to determine the cost of each wire center, followed by the use of the average cost per loop data to group the wire centers into zones based on their average cost per loop. AT&T argues that the use of cost as the basis for classifying the distinct wire centers into zones is better than the use of population density. Third, AT&T compared the geographic zones using the FLM versus the HAI model. AT&T concluded that the cost per loop was lower in every zone using the HAI.

AT&T also presented a comparison of the distribution of cost using the FLM and HAI. Its' analysis confirmed that while the level of costs between the two models is different, the distribution of wire centers into cost zones is similar. AT&T concluded that the purpose of geographic de-averaging is to reflect cost differences in each of the geographic zones. The density methodology used by PRTC assumes that the higher the number of lines per square mile, the lower the cost per line; nonetheless AT&T states that this claim was not proven.

On April 5, 2000 PRTC submitted its post hearing brief, PRTC presented three arguments. First, PRTC argued that the only UNE that should be de-averaged at this time is the local loop. PRTC points to the fact that Centennial and AT&T agree with that position. Second, notwithstanding the fact that PRTC has six local loop rates, PRTC was in favor of the adoption of a three-zone plan to satisfy the de-averaging requirement. The Board notes that the testimony of other parties also favor a three-zone plan. PRTC argued that AT&T's concept of three zones based on cost has some merit. Nevertheless, it held that determination of loop cost and the placing of wire centers within the scale should be decided in interconnection proceedings.

Third, PRTC indicated that the Board should not rely on the HAI model to determine the local loop cost and which wire center belongs in each zone. PRTC argues that this constitutes a selection of a model to be implemented in interconnection proceedings.

At the request of the Board, PRTC computed the impact of a three-zone system. PRTC compared the wire center loop cost using the HAI model versus FLM. The result was that regardless of the model used, approximately two thirds of the wire centers fell within the same zone. This analysis confirms that for the most part, population density reflects the cost of loop service.

DISCUSSION

1. Before addressing the merits of the inquiry, the Board must address the issue of the federal requirements established in section 51.507 (f) of title 47 of the Code of Federal Regulations. Section 51.507 (f) requires state commissions to establish different rates for elements in at least three defined geographic areas within the state. It further states that in order to establish geographically de-averaged rates, a state may: (1) use existing density-related zone pricing plans, or (2) create its own method to create a minimum of three cost-related zones.

2. Said rule only requires the creation of a minimum of three cost-related zones. It does not establish or mandate a specific method to create the minimum of the three cost-related zones. Hence, the Board is at liberty to establish the methodology it sees fit pursuant to Puerto Rico law, based on the evidence presented and the evaluation of the specifics of this case.

3. In the first instance, the Board addresses the issue of UNEs. All parties that submitted comments or testimony agree that the local loop is the primary UNE that should be geographically de-averaged. We agree with the parties that the local loop is the only UNE to be geographically de-averaged at this time. Other UNEs such as the switching and transport are not susceptible to geographic location because the models identifying costs for these UNEs do not, at present, distinguish these costs based on geography. Centennial brought to our attention the issue of de-averaging of collocation cost due to the rental cost factor. This

issue was briefly presented by Centennial, but no evidence or discussion regarding this was brought forth during the technical hearing. Based on the factors here presented the Board concludes that the only UNE to be de-averaged at this time is the local loop.

4. Secondly, the issue of amount of zones to be de-averaged was discussed by the Board and by the parties. As stated previously, at the present time PRTC has nine geographic de-averaged zones, of which only six are populated. As stated by Mr. David Blessing in his testimony, the greater the amount of zones the more confusing it is for the companies to order UNEs because each UNE needs to be identified by zone. A greater amount of zones requires more administrative processing and paperwork. In light of the foregoing, and the testimony presented by all parties the Board adopts a three-zone de-averaging plan.

5. In its post-hearing brief, AT&T reiterated its position that "cost is the driving factor" for the entire concept of geographic rate de-averaging. AT&T recommends that cost rather than density be used to determine geographic rate differences. The Board finds that AT&T's position has merit. While the density of the geographic area will be correlated with the cost of providing telecommunications service, The Board finds that the method adopted in this Order should use the cost of providing loop services rather than population density. The Board prefers to act on the cost values directly rather than use population density that may be subject to interpretation. This is a prudent course when the underlying costs of providing loop service are readily available from the cost model as will be the case in an interconnection proceeding.

6. Because the de-averaging concept is intended to correlate with the cost of providing service to a particular geographic area, the Board finds that de-averaging the local loop will capture the geographic cost differences that exists in a telecommunications network. The Board agrees with all parties that the local loop contains nearly all of the geographic cost differences that are evident in a telecommunications carrier network.

7. AT&T and PRTC proposed different cost models for geographic rate de-averaging. The Board declines to adopt any cost model in this proceeding. The Board finds that the method to de-average rates does not depend on the cost model used to determine these rates. The cost model is used to determine the level of cost for loop service and the geographic distribution of cost is considered independent of cost model results. Therefore, the Board adopts a rule for PRTC to use in developing UNE rates without reference to either the FLM or HAI or HCPM models, or any other cost model.

8. AT&T recommends a 0-100%, 101-200%, and 200%+ division of wire center rates based on the average loop cost for all wire centers. PRTC has agreed that this method to determine three geographic zones is acceptable inasmuch as the FCC requires a minimum of three geographic zones for UNEs. The Board finds that using the percent method proposed by AT&T may result in one zone not being populated with any wire centers. Such

a result would effectively create only two zones and is not in the spirit of the FCC requirement. (Using the FLM, PRTC demonstrated in its method comparisons that such a result may exist.) Therefore, the Board declines to adopt the AT&T method.

9. Nevertheless, the Board finds that using a cost zone method similar to the one proposed by AT&T allows for creation of three wire center zones. The Board therefore finds that the following rules are administratively easy and comply with the FCC requirement to establish three zones for UNE loop costs:

> PRTC shall sort its wire centers by average wire center loop cost in ascending order. Costs shall be determined in a manner consistent with governing laws and regulations. The first 15 percent of the wire centers will be assigned to Zone 1 (low cost zone). The next 70 percent of wire centers will be assigned to Zone 2; and, the remaining 15 percent of wire centers will be assigned to Zone 3 (high cost zone). Costs for loops in each zone will be based on the weighted-average loop cost for the wire centers in each zone. The weighting will be based on total loops in service for each wire center.

10. This method uses loop cost as the basis to determine the rate zones. We find that the 15:70:15 division is similar in result to the method proposed by AT&T but adds the guarantee that each zone will have a meaningful amount of wire centers. These results are also similar to those found by PRTC in their study, where approximately two-thirds of PRTC's wire centers fell within the same zone.

11. Currently this rule applies only to PRTC in its capacity as an incumbent LEC. Under 47 USC 251(c)(3), only incumbent LECs have the duty to provide UNEs according to the rules established by the FCC and this Board. In the event that there were another LEC designated as comparable to an ILEC under 47 USC 252(h), this rule would apply equally to that carrier.

12. We also find that this method to geographic rate de-average wire centers' loop cost is independent of the model used to determine the underlying cost and therefore this method can be used under any negotiated agreement or arbitrated cost determination.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

PRTC is ordered to establish a plan for three zones geographically de-averaged for UNE loop costs. Said plan should comply in full with all the determinations of this Resolution and Order, specifically due attention should be placed in paragraph 9 of the DISCUSSION.

PRTC and all telecommunication companies with UNE agreements are mandated, in the time period of sixty (60) days, to amend all UNEs agreements, (which contain local loop provisions), in accordance with the present Resolution and Order.

The party adversely affected by the present *Resolution and Order* may, within twenty (20) days of the filing of the same, present a motion to reconsider the *Resolution and Order*. The Board shall consider the motion within fifteen (15) days of its filing. If it rejects the motion or fails to act upon it within said fifteen (15) days, the term to petition for review shall commence to run anew as of the notification of said denial or as of the expiration of the fifteen (15) day term, whichever may be the case. If a determination is made upon the motion, the term to petition for review shall begin to run as of the date of filing of a copy of the notification of the Resolution of the Board resolving the motion definitely, which resolution should be issued and filed within ninety (90) days after the motion was filed. If the Board fails to take action on the motion for reconsideration within ninety (90) days of the filing of the motion it shall lose jurisdiction over the same and the term in which to petition for judicial review shall commence upon the expiration of said ninety (90) day term unless the Board, for just cause shown and within the ninety (90) day term, extends said term for a period no longer than thirty (30) days.

The present Resolution and Order shall be notified to all parties and to all persons and corporations certified or registered with the Board.

So it was unanimously resolved by the Board, on April 28, 2000.

Phoebe Forsythe Isales
President

Vicente Aguirre Iturrino
Associate Member

Casandra López
Associate Member

CERTIFICATE OF SERVICE

I hereby CERTIFY that the foregoing document is a true and exact copy of the Resolution and Order unanimously approved by the Board on April 28, 2000. I further CERTIFY that today, April 28, 2000 I mailed a copy of said Notice to the parties' addresses of record in the present case.

In witness whereof, I sign the present Resolution and Order in San Juan, Puerto Rico, on April 28, 2000.

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CIORAH V. MONTES GILORMINI
Secretary of the Board